IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 992

DISTRICT OF COLUMBIA,

Petitioner,

v.

PAUL M. DeHART

Respondent.

BRIEF FOR PETITIONER

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CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-12) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 20-24) is reported at 119 F. (2d) 449.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE

Pursuant to the provisions of the District of Columbia Income Tax Act imposing taxes upon the income of individuals domiciled in the District on the last day of the taxable year the respondent reported his income for the calendar year 1939 and paid the tax computed thereon. Simultaneously with such payment, the respondent filed a claim for refund of the amount paid alleging that he was not domiciled in the District on the tax date. On July 22, 1940, the Assessor, D. C., notified respondent of the disallowance of his claim. On August 28, 1940, the respondent, acting in accordance with the provisions of Section 34 of the District of Columbia Income Tax Act (53 Stat. 1103), Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V, appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia.

In 1914 the respondent took a year's leave of absence from his work in a railroad office in the State of Pennsylvania and accepted a clerical position in the Patent Office in Washington under Civil Service. Respondent did not return to the railroad office at the end of the year but continued in the Civil Service up to and including the present time. He is now chief clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington (R. 4, 5).

When respondent came to Washington in 1914 he was a single person. In 1917 he was married to a native of Washington. No children resulted from such union. Shortly after the marriage, the couple purchased as a home premises 142[illegible] Massachusetts Avenue, S. E., in Washington, wherein they both resided as long as the wife lived and in which the respondent has since resided. When first purchased, the home was encumbered by a mortgage which the respondent subsequently paid off (R. 5).

Respondent's wife died in 1935. While she was living, the respondent purchased an unencumbered lot at Selby-on-the-

Bay, in nearby Maryland, and an unencumbered lot in Hillcrest, a subdivision in the District of Columbia. Respondent and his wife had an agreement that a new home would be built on the Hillcrest lot in southeast Washington and a summer residence would be built at Selby-on-the-Bay, and, after his retirement from Government service, six months of the year would be spent at their home in the District and six months at their summer home on the Bay (R. 5, 6).

Respondent has checking or savings accounts in three District banking institutions and owns first trust notes on property located in Maryland and Virginia (R. 7).

Respondent has been an active member of the Keller Memorial Lutheran Church of Washington, D. C., since 1915. He is also a member of the Washington units of the Tall Cedars of Lebanon and the Mystic Shrine, both Masonic bodies, as well as the Motor Club of Washington. Prior to his wife's death, the respondent was a member of the Pennsylvania Society of Washington. During the calendar year 1939, he made substantial contributions to religious and charitable institutions in the District (R. 7).

Respondent was born in Pennsylvania where he resided until he came to the District in 1914. Respondent's parents reside at 1933 North Fourth Street, Harrisburg, Pennsylvania, at which premises he retains a room and claims "legal residence". Respondent pays no rent for such room but he does make monetary gifts to his parents from time to time (R. 7, 8).

Respondent has paid poll taxes in Pennsylvania and voted regularly there since he became of age. While he resided in Harrisburg, he was a member of a church and of Masonic lodges there. While on visits to Harrisburg, he attends and makes contributions to the Pine Street Presbyterian Church (R. 8).

The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that

such intention remained with him at least until the death of his wife in 1935 (R. 9). The Board, however, held that under the decision of the Court of Appeals in *Sweeney* v. *District of Columbia* [1], the respondent was not domiciled in the District of Columbia on December 31, 1939 (R. 9-12).

The Court of Appeals sustained the Board's finding that the respondent had an intention to remain and make his home in the District, and affirmed the Board's decision that he was, nevertheless, domiciled without the District.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the District of Columbia erred:

I. In holding that the domicile of an individual employed by the Federal Government is to be determined upon different principles of law than those applicable to the determination of the domicile of an individual engaged in private employment.

II. In holding that an individual who has physically removed to the District of Columbia and has an intention to remain and make his home therein indefinitely nevertheless retains his domicile for all purposes in the state where he formerly resided because of his employment by the Federal Government.

III. In holding that the respondent was not domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

STATUTE INVOLVED

Section 2(a) of the District of Columbia Income Tax Act (53 Stat. 1087), Sec. 980a., Title 20, D. C. Code, 1929, Supplement V, provides as follows:

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[1] 72 App. D. C. 30, 113 F. (2d) 25, cert. den. 310 U.S. 631.

"TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

* * * *

SUMMARY OF ARGUMENT

Conjunction of physical presence and animus manendi in the new location establishes a change of domicile. There is no question concerning the respondent's physical presence in the District of Columbia. The question of intention to remain in the District of Columbia is one of pure fact. The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time. The Court of Appeals sustained the Board's finding. Domicile in the District follows as a matter of law.

The decision of the Court of Appeals is inconsistent with Congressional intent, lacks support of either law or logic, precludes the equitable distribution of the tax burden, and sanctions tax avoidance.

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment. Such individuals are under no more compulsion to work or reside in the District of Columbia than persons in private employment. Domicile in the District for purposes of taxation is not inconsistent with the right of Federal employees to vote in their respective states of former residence.

ARGUMENT

I

Respondent was clearly domiciled in the District of Columbia under traditional formula requiring conjunction of physical presence and animus manendi.

In 1914 the respondent came to reside in the District of Columbia. Since that time he has had no home nor dwelling place except the one which he has continuously maintained in the District. When a person has one home and only one home, his domicile is the place where his home is. *Restatement, Conflict of Laws*, Chapter 2, Section 12, Page 24; *Beale, Conflict of Laws*, Sec. 19.2.

Domicile is defined in 9 *R. C. L.* 538 as follows:

> "The term 'domicile' in its ordinary acceptation means a place where a person lives or has his home. In a strict legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. In a sense domicile is synonymous with home, or residence, or 'the house of usual abode'."

See also:

Texas v. *Florida*, 306 U.S. 398;

Beale, Conflict of Laws, Sec. 9.5;

Jacobs, Law of Domicile, Section 70, Page 113, and Section 72, Page 120;

Kennan on Residence and Domicile, Section 16, Page 37;

Goodrich on Conflict of Laws, Section 25.

Where a person lives is taken *prima facie* to be his domicile, and the burden of disproving such domicile is on the person who denies it.

Anderson v. *Watt*, 138 U.S. 694;
Ennis v. *Smith*, 14 How. 400, 423;
Newman v. *United States ex rel. Frizzell*, 43 App. D. C. 53;
Bradstreet v. *Bradstreet*, 18 D. C. Rep. (7 Mackey) 229;
Gallagher v. *Gallagher* (Tex. Civ. App.), 214 S.W. 516;
Dodd v. *Dodd* (Tex. Civ. App.), 15 S.W. (2d) 686;
Harrison v. *Harrison*, 117 Md. 607, 84 A. 57;
9 *R. C. L.* 541, 557;
Restatement, Conflict of Laws, Chap. 2, Sec. 12, Page 24;
Story, Conflict of Laws (8th Ed., 1883), Sec. 46;
Kennan on Residence and Domicile, Section 172, Page 327;
Dicey, Law of Domicile, Page 9.

The Board of Tax Appeals found as a fact that the respondent, at the end of one year after he removed to the District in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time (R. 9). The Board's findings were accepted by the Court of Appeals (R. 24) and domicile in the District of Columbia follows as a matter of law.

In *Story, Conflict of Laws* (8th Ed., 1883), Section 46, the rule is stated as follows:

> "If a person has actually removed to another place with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is deemed to be his place of domicile, notwithstanding he may entertain a floating intention to return at some future period."

The rule announced by Story seems to have been almost universally adopted.

Gilbert v. *David*, 235 U.S. 561;
Mitchell v. *United States*, 21 Wall. 350, 22 L. Ed. 584;
Rosenberg v. *Comm. of Internal Revenue*, 59 App. D.C. 178, 37 F. (2d) 808;

Newman v. *United States ex rel. Frizzell, supra;*
Bradstreet v. *Bradstreet, supra;*
Ringgold v. *Barley*, 5 Md. 186, 59 Am. Dec. 107;
Klutts v. *Jones*, 21 N. Mex. 720, 158 P. 490, L.R.A. 1917A 291;
Felker v. *Henderson*, 102 A. (N.H.) 623, L.R.A. 1918E 512;
Beale, Conflict of Laws, Sec. 19.1;
Kennan on Residence and Domicile, Section 127, Page 257.

The intention to return to the domicile of nativity, or one acquired, must be fixed, absolute, and unconditional. A mere floating intention to return at some future period or upon the happening of some uncertain event is not sufficient. The intent to return must not depend upon inclination or be controlled by future events.

Sparks v. *Sparks*, 114 Tenn. 666, 88 S.W. 173, 174;
Story, Conflict of Laws (8th Ed., 1883), Section 46;
Cf. Beale, Conflict of Laws, Section 18.1.

The evidence in this case clearly shows that, at least until the death of his wife in 1935, the respondent had an intention to remain and make his home in the District until and after his retirement from Government service. There is no proof that such intention does not still remain with the respondent except his declaration to the contrary made while he was testifying in his own behalf in this proceeding before the Board of Tax Appeals. Such declarations are, at best, self-serving and are entitled to little, if any, weight. *Texas* v. *Florida, supra; Rosenberg* v. *Comm. of Internal Revenue, supra; Feehan* v. *Trefry*, 237 Mass. 169, 129 N.E. 292; 19 *C. J.* 440. 9 R.C.L. 558. Even assuming that after the death of his wife in 1935, respondent did change his intention to remain in the District after his retirement, such change of intention could not effect a change of domicile in the absence of physical removal to Pennsylvania.

It seems evident that respondent di' not intend to retain his domicile in Pennsylvania. The intention required for the acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile. *Restatement, Conflict of Laws*, Chapter 2, Section 19, Page 38. See also: *Mitchell* v. *United States, supra; Texas* v. *Florida, supra; Feehan* v. *Trefry, supra; Beale, Conflict of Laws*, Sec. 19.2. The nature of the intention required for the acquisition of a domicile of choice is clearly pointed out by Mr. Justice Holmes in the case of *Dickinson* v. *Inhabitants of Brookline*, 181 Mass. 195, 63 N.E. 331, as follows:

> "Of course the argument for the plaintiff is that his domicile is presumed to continue until it is proved to have been changed, that it could be changed only by his intent and overt act, and that he expressly denied the intent. The ambiguity is in the last proposition. The plaintiff did not deny that he intended to keep on living as he had lived for the last few years and if the jury saw fit to find, as no doubt they did, that he did intend to do so, then he did intend the facts necessary to constitute a change in domicile, and what he did not intend was simply that those facts should have their inevitable legal consequence."

See also:

Beale, Conflict of Laws, Sec. 19.2;

Jacobs, Law of Domicile, Section 148, Pages 213-215.

Respondent also testified that he has paid poll taxes in Pennsylvania and voted regularly there since he became of age. While exercise of the elective franchise is important to be considered, as a general rule it is not conclusive, and when overbalanced by other circumstances, the fact of voting may be of slight importance. 19 *C. J.* 436, 437.

See also:

Gaddie v. *Mann*, 147 F. 955;
Bradstreet v. *Bradstreet*, *supra*;
In re Sedgwick, 223 F. 655;
In re Trowbridge's Estate, 266 N.Y. 283, 194 N.E. 756;
Feehan v. *Trefry*, *supra*;
Dickinson v. *Inhabitants of Brookline*, *supra*;
Wagner v. *Scurlock*, 166 Md. 284, 170 A. 539, 542;
Kennan on Residence and Domicile, Section 78, Pages 158-161;
Wharton, Conflict of Laws, Section 63.

In considering the question of the domicile of one who has removed from one state to another, the fact that the right of suffrage has been exercised in the former state is entitled to much greater weight than when considering the domicile of one who has removed from a state to the District of Columbia. Ordinarily one wishes to take part in the political activities of the state in which he intends to live and therefore when one continues to vote in the state of his former residence this may create a presumption of a fixed intention to return to that state. But the right of suffrage is denied residents of the District. It is but natural that one who removes from a state to the District with the intention of remaining here permanently should, nevertheless, endeavor to retain his right of suffrage as long as possible. It may be that, under the law of Pennsylvania, a former resident of that state may continue to exercise a right of suffrage there until he has actually voted elsewhere. That question, however, is not before this Court. But in any event, it is plain that the State of Pennsylvania cannot accord a domicile in that state to a resident of the District of Columbia merely by permitting him to vote in its elections.

Unless the domicile of an individual employed by the Federal Government is to be determined upon principles of law different from those used in determining the domicile of an individual in private employment, it clearly appears that the

argument that respondent was domiciled in the District of Columbia on the date in question is supported by substantially all authority, including opinions of this Court. The opinion of the Court of Appeals, however, departs from the traditional formula for determining domicile in two respects: First, by placing Government employees in a special class and holding that the domicile, for purposes of taxation, of an individual so employed is to be determined upon different principles of law than those applicable to the determination of the domicile of other individuals, and, second, by holding that a Government employee maintaining his only home in the District and having an intention to remain and make his home here indefinitely is, nevertheless, domiciled for all purposes in the state where he formerly resided.

II

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

The question here presented was first considered by the Court of Appeals in the case of *James J. Sweeney* v. *District of Columbia.*[2] Sweeney had paid intangible personal property taxes assessed against him by the District of Columbia for the fiscal years 1938 and 1939 and appealed from such assessments to the Board of Tax Appeals for the District of Columbia urging invalidity of the assessments for the reason that he was not domiciled in the District of Columbia on the tax dates. Sweeney, an employee of the Federal Government, had maintained his only home in the District of Columbia for more than 20 years, during which time he had paid poll taxes and voted regularly in the elections of Massachusetts, claiming as his "legal residence" the address of an apartment house where his mother had formerly lived but at which address

[2] 72 App. D.C. 30, 113 F. (2d) 25, cert. den. 310 U.S. 631.

neither he nor any member of his family had resided for some time prior to the dates involved. The Board of Tax Appeals found as a fact that at the time Sweeney came to the District of Columbia in 1919 and up to and including July 1, 1938, the last tax date involved, he had an intention to remain in the District of Columbia indefinitely and make the District his home for an indefinite period of time and that if he had any intention to remove from the District it was a floating or conditional intention to be in the future realized, if at all, upon his retirement from Government service, if that should occur before his death, or upon the happening of some other contingency. The Board then found as a matter of law that Sweeney was domiciled in the District of Columbia on the tax dates in question [3].

In reversing the Board's decision in the *Sweeney* case, the Court of Appeals affirmed the traditional formula which holds that conjunction of physical presence and *animus manendi* in the new location brings about a domiciliary change [4]. The Court did not hold this formula to be inapplicable to persons in Government service but said that in the case of such individuals residing in the District there is a presumption of continuity of state domiciliation (or privilege of retaining state domiciliation), which presumption could be overcome by strong evidence. The Court held that [5] "one who comes to the District and remains to render service to the Government which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he gives clear evidence of his intention to forego his State allegiance." The effect of the Court's decision in the *Sweeney* case seems to be that there was insufficient evidence to support the Board's finding of intention.

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[3] 68 W.L.R. 10; Prentice-Hall State and Local Tax Service, Vol. 1, Sec. 94,030.

[4] 113 F. (2d) 25, 28.

[5] 113 F. (2d) 25, 32.

In the instant case the Board of Tax Appeals found as a fact that the respondent "at the end of one year after he removed to the District of Columbia in 1914, had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that such intention remained with him at least until the death of his wife" (R. 9). The Board, however, held that it was required by the Court's decision in the *Sweeney* case to hold that respondent was not domiciled in the District of Columbia on the tax date here involved. In this case the Court of Appeals affirmed the Board's findings of fact, including the finding of intention to remain in the District. In affirming the Board's decision, the Court restated the rule announced in the *Sweeney* case that "The controlling consideration in determining the domicile of a person engaged in Government service in the District of Columbia is found, not in length or definiteness of term, nor in election as against appointment, nor in any compulsion peculiar to military men, but in the fact that Federal duty requires residential presence in the District, upon the part of all who must come and remain here to do the work of the Government" (R. 21). The Court of Appeals, in this case and the companion case of *District of Columbia* v. *Henry C. Murphy* [6], abandons all presumptions and formulae in determining the domicile of a Government employee residing in the District of Columbia and holds that the domicile of such an individual for all purposes is to be determined solely by his own statements without regard for the facts in individual cases. This rule appears to be independent of legal precedent and unsupported by reason.

Individuals are under no compulsion to accept Federal employment or reside in the District of Columbia.

Exceptions to the traditional formula that conjunction of physical presence and *animus manendi* in the new location

[6] 119 F. (2d) 451.

brings about a domiciliary change have been generally recognized in the case of persons under physical or legal compulsion, such as soldiers, sailors, and inmates of jails, and persons without the capacity to acquire a domicile of choice, such as infants, lunatics and married women. Exceptions in such cases are based on the inability of the individuals involved to exercise any power of choice in the matter [7]. Normally, individuals accepting employment with the Federal Government are under no more compulsion than individuals accepting private employment in the District of Columbia. Employees of transportation, communication, and various other corporations operating throughout the nation are subject to transfer just as are Government employees, and the compulsion to work in the District of Columbia or elsewhere is equally strong in either case.

Furthermore, neither the Government employee nor the person in private employment is compelled to reside within the District of Columbia. Residential presence in the District is no more required in the case of persons performing Federal duty than in the case of individuals practicing professions, trades, or engaging in industrial or other business activities in the District.

The Court of Appeals' ruling does not purport to have application to all persons in the District but is limited to employees of the Federal Government. Apparently, the Court does not intend that its ruling should have application to all employees of the Federal Government, but should be limited to such employees residing in the District of Columbia. There would appear to be no logical argument supporting a special rule regarding employees of the Federal Government which applies to only a limited number of such individuals. Any

[7] See:
Gallagher v. *Gallagher* (1919; Tex. Civ. App.), 214 S.W. 515;
Kinsel v. *Pickens* (1938; D. C.), 25 F. Supp. 455;
Harris v. *Harris*, 205 Iowa 108, 215 N.W. 661;
19 *C. J.* 410, et seq.

special rule for determining the domicile of Federal employees should apply to all such employees alike. Certainly it is not reasonable that the thousands of Federal employees residing in nearby Virginia and Maryland must have their domiciles determined on a different basis than those Federal employees residing in the District.

Government employees residing in the District of Columbia are not taxable in their respective states of former residence upon income earned in the District.

In its opinion in the *Sweeney* case the Court of Appeals takes the view that its holding that Government employees are not domiciled in the District of Columbia subjects such individuals to taxation in the respective states where they formerly resided, and that such individuals are not, therefore, legally or morally, placed in a preferred position and that no unjust discrimination between such individuals and non-Government employees results. This view is stated by the Court without reference to the various state taxing statutes and apparently without consideration of the basic theory of taxation.

Thirty-four states tax individual income. The laws of three of such states tax only the income from certain intangibles and are clearly applicable only to individuals actually residing within the respective states [8]. In the thirty-one states im-

[8] Ohio imposes a tax upon intangibles which, in the case of income-producing investments, is measured upon the annual yield therefrom. Only persons having an actual place of abode in the State for a period of more than six months of the tax year are liable for the tax. See Ohio Corporation Tax Service, Par. 20-708.

Tennessee has a special income tax on interest and dividends, imposed upon individuals "in" Tennessee. Domicile, for purposes of liability to the tax, is construed by the administrative officials and courts to mean "actual residence" in the State. See Tennessee Corporation Tax Service, Par. 15-101 and citations thereunder.

Laws of New Hampshire impose taxes upon the income from certain intangibles of individuals who are inhabitants or residents of the State on January 1 in any year and on individuals who ceased to be residents of the State during the preceding calendar year on such part of the year as they were residents of the State. See New Hampshire Corporation Tax Service, Par. 9175-2

posing taxes upon the net income of individuals, such taxes apply to "residents", persons "residing within", or "inhabitants" of the respective states. In substantially all cases, these terms are defined, either by law or regulation, to include individuals domiciled within the respective states. In four of such states, the term "domiciled" is specifically limited to persons actually residing within such states [9]. The laws and

[9] The California income tax law provides that: "Every natural person who is in the State of California for more than a temporary or transitory purpose is a resident and every natural person domiciled within this State is resident unless he is a resident within the meaning of that term as herein defined of some other State, Territory or country." Article 2(k)-1 of the California regulations provides that: "Under this definition, an individual may be a resident although not domiciled in this State, and, conversely, may be domiciled in this State without being a resident. The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws, and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are physically present in some other state or country for other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and government of this State." See California Corporation Tax Service, Par. 15-047.

Article 15-1 of regulations issued by the State Tax Commission of Idaho provides "Residence is defined as an act or fact of abiding or dwelling in a place for some time. Residence is not domicile." See Idaho Corporation Tax Service, Par. 1494f. H.B. 294, Laws of 1941, amends Sec. 61-2412 of the Idaho Code by adding Paragraph (7), which excludes the income of resident persons derived from salaries, wages or compensation for personal service, or from the conducting and carrying on of their professions, vocations, trades, or businesses, when derived from sources outside of the State of Idaho (effective March 7, 1941). See Idaho Corporation Tax Service, Par. 10295h.

Article 105 of regulations pertaining to the Wisconsin income tax law contains language identical to that above quoted from the Idaho regulations. Decisions cited following paragraph 10-110 of the Wisconsin Corporation Tax Service clearly show that Wisconsin courts consider individuals taxable only to the extent that they actually reside within the State during the taxable year.

Paragraph 7 of Section 350 of the personal income tax law of the State of New York provides that "The word 'resident' applies only to natural persons and includes any person domiciled in the state, except a person who, though domiciled in the state, maintains no permanent place of abode within the state, but does maintain a permanent place of abode without the state, and who spends in the aggregate not to exceed thirty days of the taxable year within the state." See New York Corporation Tax Service, Par. 15-014.

regulations of three additional states apparently limit the imposition of the tax to individuals actually residing within such states [10]. The courts of Massachusetts apparently consider that domicile for purposes of taxation means actual residence, or "home for the general purposes of life" [11]. Examination of the laws and regulations of the remaining twenty-three states discloses that in only one instance do such laws or regulations indicate an intention to extend the tax to individuals (either Government employees or others) having their homes and actually residing and earning their incomes without the state [12].

Any attempt to impose taxes upon income earned without the taxing jurisdiction by individuals residing without the jurisdiction and receiving no benefits or protection therefrom violates the fundamental principles of taxation. And in the vast majority of cases, such attempts can operate only upon volunteers [13]. In few cases does the state have jurisdiction over either the individual or any of his property and even if such a tax were valid, successful enforcement would be impossible.

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[10] See:
New Mexico Corporation Tax Service, Paragraph 1016q.
Colorado Corporation Tax Service, Paragraph 10-003.
Delaware Corporation Tax Service, Paragraph 90-801.

[11] See:
Pickering v. *City of Cambridge*, 144 Mass. 244, 10 N.E. 827;
Feehan v. *Trefry*, 237 Mass. 169, 129 N.E. 292.

[12] The Kentucky regulations attempt to tax the income of individuals in Government service without the State who claim domicile therein. See Kentucky Corporation Tax Service, Paragraph 10-016.

[13] In a letter dated December 10, 1940, the State Tax Commission of West Virginia states that no ruling has been promulgated with respect to liability of Federal employees residing in Washington to file income tax returns in the State of West Virginia although some such individuals have been advised that so long as they consider West Virginia as the place of their legal residence and domicile they should file returns with the State. See West Virginia Corporation Tax Service, Paragraph 10-055. In other words, the Commission declines to discourage willing contributors.

It therefore seems obvious that the rule laid down by the Court of Appeals is inconsistent with the tax laws of most of the states, and leads to confusion, tax avoidance, and discrimination.

Domicile in the District of Columbia is not inconsistent with political status in one of the states.

The Court of Appeals has not only failed to recognize a distinction between domicile or *civil* status and *political* status but has held that the latter determines the former. In other words, the Court has said that the personal rights of an individual in Government employment, i.e., the law which determines his majority or minority, his marriage, succession, testacy or intestacy, and the like, depends not upon the place where he lives and has his home but upon the place where he formerly resided and acquired the right to vote. Whether an individual who has abandoned his residence in a state and accepted Federal employment and established residence in the District of Columbia may continue to retain a political status in the state where he formerly resided is a matter to be determined by the laws of such state. The laws of most states allow persons in Government service to continue to vote in the elections of such states. Since an individual has no political status in the District of Columbia it is proper and desirable that he be allowed to retain his citizenship or *political* status in the state of his former residence. This privilege is generally granted to all persons in Government service whether residing in the District of Columbia or not [14]. There is, however, no corresponding reason why an individual residing permanently or at least indefinitely, in the District of Columbia should have a *civil* status or domicile for all purposes in a state where he may never again reside, and it does not appear that the state laws generally accord such a status or domicile to individuals who have been absent therefrom for long periods in Govern-

[14] *Campbell* v. *Ramsey* (Kans., 1939), 92 P. (2d) 819.

ment service [15]. And the fact that such individuals retain their *political* status and continue to vote in their respective states of former residence is not inconsistent with the fact that they acquire a *civil* status or domicile in the District of Columbia where they live, enjoy the benefits and protection of local government, by the laws of which District their personal rights should be determined and in which place they are legally domiciled [16].

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[15] In *Sparks* v. *Sparks*, 114 Tenn. 666, 88 S.W. 173, one who took his family to Washington and lived there 22 years was held to have lost his citizenship, residence and domicile in Tennessee although he occasionally returned to that state and had voted and paid taxes there and had repeatedly expressed his intention of returning to that state in case he should lose his position.

[16] There is a clear distinction between citizenship on the one hand, and residence or domicile on the other. *Kennan on Residence and Domicile*, Section 62, Pages 136-137, citing among others the case of *Brown* v. *United States*, 5 C. Cls. 571, 579, wherein the Court stated: "We cannot accept the doctrine that the matter of domicile affects the fact of citizenship nor that a mere foreign residence, of itself, can work a forfeiture of political rights."

"Both residence and domicile have to do with a certain set of relations between a person and a place, while citizenship is based upon one's political status which is quite a different thing." *Kennan on Residence and Domicile*, Section 61, Page 135.

"Allegiance and domicile are entirely distinct things. They may exist apart; they may exist together; but the one does not necessarily involve the other." *Jacobs, Law of Domicile*, Section 144, Pages 208, 209.

The distinction is clearly drawn in *Shaeffer* v. *Gilbert*, 73 Md. 66, 20 A. 434, where it is said:

"But there is, it seems to us, a broad distinction between domicile, in a legal and technical sense, by which one's civil status and the rights of persons and property are determined, and residence required by the Constitution as a qualification for the exercise of political rights. 'Domicile', in a legal sense, has, as we all know, a fixed and definite meaning; and yet the word 'domicile' is nowhere to be found in the Constitution. * * * The framers of the Constitution were dealing with the question of residence for political purposes, which, although analogous in many respects, is not to be understood in the same sense as domicile in law, by which the rights of persons and property are governed."

Most Government employees remain in the District of Columbia after retirement.

At the hearing before the Board of Tax Appeals there was introduced in evidence, by stipulation, a statement, taken from a Report by the Statistical Division, United States Civil Service Commission, on Employment and Payrolls in the Executive Branch of the United States Government, published July 8, 1940, showing that on May 1, 1939, 13.59% of all persons employed in the Executive Branch of the Federal Government were so employed within the District of Columbia. This figure includes persons residing without the District, principally in nearby Maryland and Virginia. There also was included in the stipulation a statement, taken from the Retirement Report for the Fiscal Year Ended June 30, 1939, prepared by the Retirement Division, United States Civil Service Commission, showing that on May 1, 1939, 11.75% of all persons receiving annuities under the Civil Service Retirement Act were residing within the District of Columbia (R. 9). The number or percentage of active Federal employees residing in the District is not available, but if it is assumed that 16.5% of Federal employees working in the District reside without its boundaries, then the percentage of active Federal employees residing in the District is the same as the percentage of retired Federal employees residing in the District. These official figures strongly support the view that substantially all Federal employees continue to reside in the District after retirement from Government service.

III

Respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

Intention of Congress

The District of Columbia Income Tax Act was enacted as Title II of the District of Columbia Revenue Act of 1939. The

bill, as originally introduced and passed by the House of Representatives, provided for a tax upon both residents and nonresidents. [17] The bill was amended on the floor of the House so as to exempt from the income tax "Senators, Representatives, Delegates, Resident Commissioners, officers and employees of the Senate and House of Representatives of the United States". [18] This exemption provision was unacceptable to the Senate and it was agreed in conference that the tax should be levied upon "every individual domiciled in the District of Columbia on the last day of the taxable year". In reporting the action of the conferees to the Senate, Senator Overton, chairman of the Senate conferees, called attention to the fact that the individual income tax is imposed only on those domiciled in the District, and stated:

> "* * * It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and all Federal employees who have been brought into the District from the various States of the Union to serve their country in the National Capital, provided such employees have not of their volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia." [19]

Mr. Nichols, the chairman of the House conferees on the bill, was absent from the conference and the conference report and explanation of the bill to the House of Representatives was made by Mr. Dirksen, a member of the Fiscal Affairs Subcommittee of the House District Committee and one of the conferees. In the course of such report, the following discussion occurred on the floor of the House (84 Cong. Rec., July 12, 1939, 12527, 12528, 12529):

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[17] See H. R. 6577, 76th Congress, First Session.

[18] 84 Congressional Record 9892-9893.

[19] See 84 Congressional Record, July 11, 1939, 12347.

"MR. DIRKSEN. * * *

The very explosive and controversial item relative to the applicability of the tax was finally resolved when we wrote a provision in the conference bill to the effect that it applies only to those who are legally domiciled in the District of Columbia on the last day of the taxable year. This takes out Members of Congress, it takes out Senators, and it takes out the employees who come and go from Washington, making the tax applicable only to those who are domiciled in the District of Columbia on the last day of the taxable year. I believe this meets the great objection that was made to this bill in the first instance.

* * * *

' IR. MCCORMACK. Will the gentleman state what his understanding or intent or what the intent of the conference committee or the Congress is in that respect, taking the case, for instance, of an employee of the Federal Government, a civil-service employee, in the Department of Agriculture or any other department, for instance, who is employed steadily year after year. Could he register as his legal place of residence Massachusetts or Illinois on the last day of the calendar year, exercising an election in the matter?

"MR. DIRKSEN. My interpretation of the matter is that their right to vote back home is preserved under this bill by complying with tax requirements, by way of poll tax and otherwise; but if they are actually domiciled here, which means that they have a legal domicile here, they will be taxable in the District of Columbia.

"MR. MCCORMACK. Does the gentleman realize the situation in which that places such an employee

unless he gives up his right of suffrage or the exercise of his right of suffrage? He would have to pay an income tax in his own State, he would have to pay an income tax here, and he would have to pay an income tax to the Federal Government.

"MR. DIRKSEN. I do not so understand it. I think one can have a taxable domicile in the District of Columbia and still preserve his voting rights back home.

"MR. MCCORMACK. If you have a residence for voting purposes, you have a domicile in the State in which you are voting, have you not?

"MR. DIRKSEN. I do not believe so.

"MR. MCCORMACK. The gentleman, I am sure, does not want to put any employee of the Federal Government in a different position from that in which he places a Member of Congress.

"MR. DIRKSEN. That is quite true.

"MR. MCCORMACK. I agree that a Member of Congress should not pay an income tax to the State, to the District, and to the Federal Government. The newspapers, unfortunately, and I assume in many cases unintentionally, have misstated the situation. However, the same thing applies, in my opinion, to the employees of the Federal Government; and if their legal domicile is in the District of Columbia, they are subject to the income tax. If they register in their home State, then, in my opinion, they are also subject to the income tax of the State and they are also subject to the income tax of the Federal Government.

"MR. DIRKSEN. I may say that is not my interpretation of it and neither is that the interpretation of

the tax experts who worked with the committee on this subject.

"MR. MCCORMACK. I think this is a point that should be cleared up. Suppose a person comes from Boston, and the same thing applies to any other city in the country or any other State like Massachusetts, and his yearly employment is in the District of Columbia. He is living here all the year, but he registers for voting purposes in Massachusetts. He cannot vote here and we all know the reasons why, but he wants to exercise his right of suffrage and if he registers in Massachusetts, does he still have to pay the income tax here?

"MR. DIRKSEN. That precise question was raised in the course of the conference. (Here the gavel fell.)

"MR. NICHOLS. Mr. Speaker, I yield the gentleman 5 additional minutes.

"MR. DIRKSEN. I will say to the gentleman from Massachusetts that I raised that precise question in the course of the conference. We had it up at considerable length with all the tax advisers to this committee, as well as the conference committee, and we were of the opinion you could be taxed here, and yet you can vote back home because you have a taxable domicile in the District. It does not interfere with your right, if you pay your poll tax in Massachusetts, to vote back there and still pay your income tax here. The situation the gentleman alludes to might very conceivably arise in connection with the case of a family that has lived here for 20 or 30 years. They continue to vote back there, but is there any reason why it should not be held that they have a taxable domicile in the District of Columbia since this is the place where they live?

"MR. MCCORMACK. I understand that, and I do not want to prolong my inquiry, although I consider it very important.

"MR. DIRKSEN. It is important.

"MR. MCCORMACK. I think the conference committee has decidedly improved the bill over its condition as it passed the House and the Senate, but does the gentleman not think that the District of Columbia is peculiar? It is entirely different from any other political subdivision; it is entirely different from any other city in the country. People come here from all over the country, most of them employed by the Federal Government, and most of them thinking of home. They may stay here 20 or 25 years, thinking of retirement, and thinking finally of getting back home to Michigan or California or Texas or whatever the State may be from which they came.

"If they are going to be subject to the State income tax and the District income tax and the Federal income tax, then we are subjecting them to three income taxes, and in order to avoid that they have only one thing to do and that is not to register for the purpose of voting, and if we compel them to do that, then we are compelling them to involuntarily give up the exercise of their suffrage. Whether or not they are to be taxed in the States is something that we cannot determine. That will be determined in accordance with State law, not by anything that we pass, or anything that the Commissioners of the District of Columbia may say.

"MR. DIRKSEN. All we can determine is that in every State there is a credit device whereby the charge that there may be triple taxation is avoided.

"MR. BATES of Massachusetts. Mr. Speaker, will the gentleman yield?

"MR. DIRKSEN. Yes.

"MR. BATES of Massachusetts. That particular point that my colleague from Massachusetts raises was made very pointedly in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income-tax provisions of the new law, and it was distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also.

* * * *

"MR. NICHOLS. Mr. Speaker will the gentleman permit me to read the legal definition of the word 'domicile'?

"MR. DIRKSEN. I yield to the gentleman from Oklahoma.

"MR. NICHOLS. Since the question of the effect of the word 'domicile' in this act has been raised, I think the House would probably like to have the legal definition read:

> "Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights. * * * There must exist in combination the fact of residence and animus manendi—

> which means residence and his intention to return; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States."

In support of its view that the legislative history of the Act here involved "clearly reveals" Congressional intent consistent with the rule laid down in this and the *Sweeney* case, the Court of Appeals relies on the above-mentioned statements of Senator Overton, Mr. Nichols, and Mr. Bates (R. 22, 23). It is respectfully submitted that this conclusion of the Court of Appeals, based upon selected portions of the legislative history, is erroneous, and that an examination of the entire legislative history of the Act reveals Congressional intent consistent with the views taken by the petitioners herein. This view is supported by the following considerations:

(a) The language in dispute was inserted in the bill by the conferees. Thus, the interpretation of the conferees is of primary importance in determining Congressional intent. The above-quoted remarks of Mr. Dirksen clearly set forth the interpretation which the conferees intended to have placed upon the language in question. The views of the conferees, having been explained and discussed on the floor, apparently were accepted by the members of the House of Representatives.

(b) The statement by Mr. Bates, one of the conferees, merely confirmed the fact that the questions in issue had been raised in the Committee of Conference, and affirmed Mr. Dirksen's statement that the credit device available in each state should be used to avoid any possibility of "triple taxation".

(c) Mr. Nichols, although chairman of the House conferees, was not present at the conference on the bill and, therefore, was not in position to express the views of the conferees. The definition of the word "domicile" which he read from the floor presumably has the sanction of its unidentified author but

was neither subscribed to by any of the conferees nor adopted by the House.

(d) Likewise, Senator Overton did not suggest that his interpretation of the term "domiciled" represented the views of the conferees. The conference report was accepted by the Senate without debate and, in view of the clear statements during the course of the debate in the House regarding the opinion of the conferees, it would appear that Senator Overton's statements regarding the construction to be placed upon the term "domiciled" are merely expressions of personal opinion and do not represent the views of any of the other conferees.

The only reasonable interpretation of the word "domiciled" is that urged by the petitioner.

In construing the language here in question, practical considerations applicable to taxation should prevail.[29] The interpretation adopted by the Court of Appeals in the instant case is not only unreasonable and impractical but is inconsistent with that Court's decision in the *Sweeney* case. The *Sweeney* decision apparently attempts to adhere to the traditional legal formula for determining domicile and the evidence clearly shows that respondent here was domiciled in the District of Columbia on December 31, 1939, under the test laid down in the *Sweeney* case. In the instant case, however, the Court of Appeals abandons all legal formulae and holds that Government employees residing either permanently or indefinitely in the District of Columbia may elect to be domiciled in either the District or the states wherein they formerly resided, and, likewise, may elect to contribute to the support of either or neither of such governments.

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[29] Cf. *Helvering* v. *Hallock*, 309 U.S. 106; *Farmers' Loan & Trust Co.* v. *Minnesota*, 280 U.S. 204.

Respondent came to the District voluntarily to seek employment and has remained here through preference for more than twenty-six years, and intends to remain here and make the District permanently his home. Although he may elect to retain his citizenship and vote in the State of Pennsylvania it is only reasonable and sensible that he should be domiciled in the District of Columbia for purposes of taxation and be thereby required to contribute proportionately to the support of the government which affords him protection. [21]

CONCLUSION

For the reasons above stated, it is respectfully submitted that respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939, and that the decision of the Court of Appeals should be reversed.

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[21] Cf. *New York Ex Rel. Cohn* v. *Graves*, 300 U. S. 308.